



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1995

Mr. Burton F. Raiford
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR95-1311

Dear Mr. Raiford:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36559.

The Texas Department of Human Services (the "department") received a request for copies of certain documents relating to an employee of the department. You assert that the information being requested is excepted from disclosure by section 552.103 of the Government Code and have submitted the responsive documents to our office for review.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

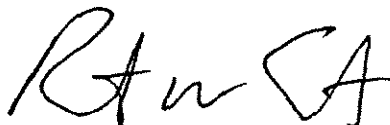
You state that the requestor has filed a complaint against the department with the Equal Employment Opportunity Commission. You have submitted a copy of the complaint for our information. This office has held that the pendency of a complaint before the commission indicates a substantial likelihood of potential litigation, and is therefore sufficient to satisfy the first prong of the 552.103 test. Open Records Decision No. 386 (1983) at 2. Thus, you have met the first prong and have shown that litigation is reasonably anticipated.

You state that the requested information "relates to the subject matter" of the complaint pending before the commission, but provided no explanation to demonstrate how the information relates to the complaint or the anticipated litigation. However, the information when read in conjunction with the complaint demonstrates on its face that the information is related to the anticipated litigation. Therefore, you may withhold this information under section 552.103 of the Government Code.

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "RWS" followed by a stylized "CA" or similar mark.

Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/rho

Ref.: ID# 36559

Enclosures: Submitted documents

cc: Mr. Robert C. Obregon
(w/o enclosures)